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7 United States of America

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA ) Criminal Case No. 07CR2872-JM  
11 )  
Plaintiff, )  
12 ) **GOVERNMENT'S MOTION FOR:**  
13 v. ) **(1) FINGERPRINT EXEMPLARS**  
14 ) **(2) RECIPROCAL DISCOVERY**  
JUAN HERON-SALINAS, ) **TOGETHER WITH STATEMENT OF FACTS**  
15 ) **AND MEMORANDUM OF POINTS AND**  
16 Defendant. ) **AUTHORITIES**  
17 ) Date: November 30, 2007  
18 ) Time: 11:00 A.m.  
19 ) Court: The Hon. Jeffrey T. Miller

20 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,  
21 Karen P. Hewitt, United States Attorney, and Nicole Acton Jones, Assistant United States Attorney, and  
22 hereby files its Motion for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced  
23 case. Said motions are based upon the files and records of this case together with the attached statement  
24 of facts and memorandum of points and authorities.

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**I****STATEMENT OF THE CASE**

On October 17, 2007, a federal grand jury in the Southern District of California returned a one-count Indictment charging defendant Raul Mendez-Vargas (“Defendant”) with Attempted Entry After Deportation, in violation of Title 8, United States Code, Section 1326. On October 30, 2007, Defendant was arraigned on the Indictment and entered a plea of not guilty.

**II****STATEMENT OF FACTS****A. Defendant’s Apprehension**

On October 9, 2007, at about 6:30 a.m., Defendant attempted to enter the United States from Mexico through the San Ysidro Port of Entry. Specifically, Defendant was found, along with three other people, concealed in the trunk of a 2001 Volkswagen Jetta. Defendant was escorted to secondary inspection.

In secondary, Defendant’s biographical information and fingerprints were entered into the IAFIS and immigration computer databases, which revealed Defendant’s criminal and immigration history. Defendant was then advised of his Miranda rights in the Spanish language. Defendant elected to waive invoke his right to remain silent. Defendant was also advised of his consular communication rights and he notified a consular officer of his arrest.

**B. Defendant’s Criminal and Immigration History**

On January 18, 2000, Defendant was convicted in Los Angeles Superior Court of Assault with a Firearm on a Person in violation of California Penal Code § 245(a)(2). Defendant was sentenced to 72 months in custody.

On December 4, 2006, Defendant was convicted in this District of alien smuggling in violation of 8 U.S.C. § 1324. Defendant was sentenced to 18 months in custody

Defendant appeared before an Immigration Judge for a deportation hearing on December 30, 2004 and was physically removed from the United States to Mexico through the Calexico Port of Entry. Defendant was most recently physically removed to Mexico on October 1, 2007 through Pennsylvania following his release from Federal Correctional Institution Gilmer.

1 By the Government's calculations, Defendant has 9 criminal history points under the Sentencing  
2 Guidelines and is in criminal history category IV. His guideline range is 77 to 96 months.

3 **III**

4 **UNITED STATES' MOTIONS**

5 **A. FINGERPRINT EXEMPLARS**

6 The United States requests that the Court order that Defendant make himself available for  
7 fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427  
8 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal  
9 and immigration records in Section 1326 prosecution). The privilege against self-incrimination only  
10 applies to testimonial evidence. See Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal  
11 of blood is not testimonial). Identifying physical characteristics, including fingerprints, are not  
12 testimonial in nature and the collection and use of such evidence does not violate Defendant's Fifth  
13 Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir.  
14 1969).

15 **B. RECIPROCAL DISCOVERY**

16 The Government has and will continue to fully comply with its discovery obligations. To  
17 date, the Government has provided Defendant with 69 pages of discovery and one DVD. The  
18 Government has ordered Defendant's A-File, but because he was removed from the United States so  
19 recently and the removal was initiated in Pennsylvania, the file has not yet been received. The  
20 Government has also ordered the audiotape from Defendant's hearing before an Immigration Judge  
21 and will produce a copy as soon as the tape is received and a duplicate has been made. Furthermore,  
22 the Government will request that the arresting agency preserve any evidence the Government intends  
23 to introduce in its case-in-chief or that may be material to the defense. The Government moves the  
24 Court to order Defendant to provide all reciprocal discovery to which the United States is entitled  
25 under Rules 16(b) and 26.2. Rule 16(b)(2) requires Defendant to disclose to the United States all  
26 exhibits and documents which Defendant "intends to introduce as evidence in chief at the trial" and a  
27 written summary of the names, anticipated testimony, and bases for opinions of experts the defendant  
28 intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that its motions be granted.

DATED: November 16, 2007.

Respectfully Submitted,

KAREN P. HEWITT  
United States Attorney

/s/ Nicole Acton Jones  
NICOLE ACTON JONES  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Criminal Case No. 07CR2872-JM  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JUAN HERON-SALINAS, ) CERTIFICATE OF SERVICE  
 )  
Defendant. )  
\_\_\_\_\_ )

IT IS HEREBY CERTIFIED THAT:

I, NICOLE ACTON JONES, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S MOTION FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Jennifer Coon, Federal Defenders of San Diego, Inc.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2007.

/s/ Nicole Acton Jones  
NICOLE ACTON JONES  
Assistant U.S. Attorney